

Executive Advisory Committee

Stormwater Program – County of Los Angeles

August 25, 2004

Arthur G. Baggett Jr., Chair
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

Post-it* Fax Note	7671	Date	8/25	# of pages	3
To	Debbie Irvin	From	Gerry Greene		
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Subject: Submission of Comments on the Draft Policy of Developing California's Clean Water Act 303(d) List and Functional Equivalent Documents

Dear Mr. Baggett:

The Los Angeles County Municipal Separate Storm Sewer System (MS4) National Pollutant Discharge Elimination System (NPDES) Executive Advisory Committee (EAC) represents the interests of municipal permittees regulated under Los Angeles Regional Water Quality Control Board (LARWQCB) Order No. 01-182. The EAC previously provided comments at the February 5, 2004 Torrance workshop. The regional receiving waters are significant resources that deserve appropriate protection and preservation, given the competing costs and needs for continued economic growth and housing in the region. We appreciate this opportunity to provide comments on the California 303(d) Listing and De-listing Policy and the accompanying Functional Equivalent Documents.

The permittees would like to acknowledge the SWRCB and local RWQCBs for their effort to standardize the delisting and listing process by incorporating reproducible scientific methodologies in their approach. This is exemplified through the use of the binomial distribution and null hypothesis testing. These components of 303(d) list preparation should have been a cornerstone of the entire program, however this more accessible and rigorous policy, will increase the public confidence in 303(d) listing and delisting process and thereby promote a less contentious and productive atmosphere.

The EAC is concerned that the many changes in the policy have substantially reduced its scientific rigor and will result in inconsistent statewide application or the listing of unsubstantiated impairments. The regulated and regulatory communities are both dependent on the 303(d) list to assist us in prioritizing the expenditures of limited state and local funds on what seems to be an exponentially increasing number of TMDLs. The permittees would like to rely on the correctness of the listings in committing funds to improve the regions water quality. Leaving the regulated communities to self prioritize impairments, separate subjectivity from science, and "possible" from "existing" impairments, does a disservice to the public and waste valuable resources. Therefore, the EAC recommends reconsideration of the following issues to restore scientific rigor and encourages the Board to undertake a thorough review of past listing to ensure that the policy has been uniformly implemented and integrated into the current list.

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Mr. Arthur G. Baggett Jr.

August 25, 2004

Page 2 of 3

1. Listings must identify a pollutant that can be controlled or eliminated.

Without this, it is impossible to identify load or waste load allocations for that pollutant. Subjective observations of unknown toxicity, foam, or odor are incompatible with reasonable scientific measures and should not be the sole line of evidence for listing.

2. Clarify Application of the Weight-of-Evidence Approach.

This approach needs to have a clear definition that conveys an approach when multiple lines of evidence, each with unique strengths and weaknesses, are assembled. Agencies seeking to amend the list should provide enough data to both fully support the listing and defend the delisting, which should be the ultimate goal of each TMDL. The primary lines of evidence should include a statistically significant sample of water column or fish tissue concentrations in the reach of interest. Secondary "conditions of pollution" such as population and community changes should be minimized as they may indicate natural fluctuations or impacts from conditions that are beyond permittee control, such as habitat modification, exotic organisms, food chain disruption, and over-fishing that are due to factors other than pollutant concentrations.

3. Identify Reference Conditions in Visual/Semi-Qualitative Assessments.

If visual and semi-qualitative assessments for listing factors such as nuisance, adverse biological response, degradation of biological populations and communities, and bioaccumulation are accepted as ancillary lines of evidence, then steps should be taken to insure that they refer to quantifiable conditions in the reference condition.

4. Revise the Definition of Conventional and Toxic Pollutants.

Trash and sediment, among other runoff constituents, are not toxic. Toxic pollutants should be limited to 40CFR123.45, the Group 2.

5. Require that Data be Assessed for Validity and Applicability.

In section 6.1.4 of the text, we suggest replacing "used" with "evaluated," as some data should not be usable after evaluation and quality assessment. Data from acute spill events, or other upset condition, should not be used in making the listing decision. The age of data should also be considered. Many changes have occurred through the MS4 permit cycles and we should not be creating TMDLs simply to delist them again. Similarly, data should be representative of the time period (minute or season) under consideration, which current language in section 6.1.5.3 does not sufficiently present.

6. Restore Section 3.1 Natural Background/Physical Alteration Exclusion.

The Listing Policy should reincorporate language preventing waters from being listed due to natural or background conditions or physical alterations, such as reservoirs, that could not be controlled, but are causing impairments.

7. Reach Specificity

The listing Policy seems to infer that measurements from one reach section can be used to list an entire segment. In some cases, this is unnecessarily broad and could be due to habitat or specific discharge issues. In these cases it would be more appropriate to address the specific problem rather than an entire reach consisting of many stream miles.

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Mr. Arthur G. Baggett Jr.
August 25, 2004
Page 3 of 3

8. Reference to Existing Policy Statements

Scientific theory becomes policy when regulations refer to documents that are unofficial; "The Water Quality Control Policy for Addressing Impaired Waters" is an example.

9. Promulgate Listing Criteria to Permit Future Stakeholder Review

A consistent complaint with early 303(d) listing episodes is the inability of the regulated community to identify the source of impairment data, which therefore impedes the source control and delisting process. The justification or rationale referenced in the Fact Sheet or staff report should be included for stakeholder review and made apart of the record. This would also facilitate data collection for future reviews by all of the involved groups

10. Provide a Time Frame for Review of Prior Listings.

Early listings were too frequently based on obscure or limited data, and the objective opinion of local or even temporary regulatory staff. The current 303(d) list should allow for delisting under a reduced level of burden, based on the recognition that the listing may have been less well formalized than under the proposed policy. A timeframe should be developed to facilitate and expedite the completion of this process

11. Reconstruct the Enforceable Programs and Watch Lists.

The EAC recommends that the policy continue to allow the use of alternate lists. The enforceable programs lists resulted in a successful effort to separate and distinguish problems that could be addressed without the risk of extended controversy. Likewise, the Watch list could be used to gather required data by any stakeholder before it becomes a conflict and each side becomes hardened in their views.

As at the Torrance Workshop, the EAC and local MS4 permittees appreciate this opportunity to provide input on the 303(d) listing delisting policy. If you wish to discuss this issues raised in this comment letter, or seek the further input from the EAC in assisting your Board with developing a more cooperative policy, please feel free to contact me at 562-904-7102.

Sincerely,



Desi Alvarez, P.E.
Chair, Executive Advisory Committee

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